

# ARIZONA RACING COMMISSION

585<sup>TH</sup> REGULAR MEETING

WEDNESDAY, MAY 13, 2009

## MINUTES OF PUBLIC MEETING

A public meeting of the Arizona Racing Commission was convened on Wednesday, May 13, 2009 beginning at 9:00 a.m. in the Building Conference Room, Suite 250, 2<sup>nd</sup> Floor, at 1110 West Washington Street, Phoenix, Arizona 85007.

### A. Call to Order

<b>Present:</b>	<b>Chair</b>	<b>Erin Owens</b>
	<b>Vice-Chair</b>	<b>Leslie Wootten</b>
	<b>Commissioner</b>	<b>Paul Ulan</b>
	<b>Commissioner</b>	<b>Burton S. Kruglick</b>

**Also Present:** Luis A. Marquez- Director, Mary Williams- Assistant Attorney General, Mary Jo Foster- Solicitor General, Nancy Beck- Assistant Attorney General, Elizabeth Campbell- Assistant Attorney General, and Kelly Gates- Commission Secretary.

### A. Call to Order

**Chair Owens** called the 585<sup>th</sup> Regular Meeting of the Arizona Racing Commission to order at 9:14 a.m.

The following matters were discussed, considered, and decided at the meeting:

#### 1. Approval of the Minutes:

**The 584<sup>th</sup> Regular Meeting held April 8, 2009- Chair Owens** called for a motion. **Commissioner Ulan** moved for approval. **Vice-Chair Wootten** seconded the motion. **All in favor.**

### B. Information Reports

- Newly Appointed Commissioners- Director Marquez** announced that the Commission had two new members: A. Melvin McDonald who was unable to attend the 585<sup>th</sup> meeting due to a scheduling conflict and Burton S. Kruglick who was in attendance. **Commissioner Kruglick** stated that he was happy to be back on the Commission and that he felt strongly about racing matters. **Director Marquez** welcomed him.
- Department Monthly Report - Director Marquez** told the Commission that the Department has been able to manage its budget for FY 2009 with the cuts that were made in January. He stated that Department policies and procedures are being updated in accordance with the requests of the Auditor General and to ensure appropriate internal controls are implemented to safeguard State's resources. **Director Marquez** included one revised Alternative Work Schedule Policy (04-004) for the Commission's information and informed them that the Pre-Employment Screening Policy was provided to Permittees for their input. **Director Marquez** informed the Commission that changes to Agency rules were subject to a moratorium by Governor Brewer. The rules with Commission approved fee changes have been distributed to stakeholders and permittees. **Director Marquez** encouraged the industry to discuss recommendations for rule changes and the elimination of irrelevant, unnecessary rules. **Director Marquez** stated that the Department investigated the adequacy of track security at each of the state's tracks. The Department found that although reductions in personnel had occurred, those employees that remain are experienced and well trained. The Department considered track security to be adequate at this time. **Chair Owens** expressed concern about car theft at Turf Paradise and requested that although security is adequate at this time that the Department be aware and monitor the situation. **Director Marquez** stated that he was working closely with the Governor's Office of Strategic Planning and Budgeting and that they are aware of the Department's situation and the effects of further budget cuts on the industry and the Department's ability to regulate it. He informed the Commission that the Department has eleven vacant positions and that the proposed cuts may permanently eliminate four of these vacant positions. The Department's total operational reductions will be \$294,700 which represents a reduction of almost 29% from the FY2008 budget in FY2010. **Director Marquez** stated that HB2635 would establish Department administered Funds appropriations to proceed from the General Fund rather than directly from Unclaimed Property to the Department. **Chair Owens** opened the floor for comments from attendees on the subject. **Ms. Elaine Arena** stated that the industry would like to have the revenues for Department Funds established by statute and that the Legislature could then, if needed, remove funds by way of Session Law. **Mr. Casey**

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**Faunce** stated that County Fair Racing was compensating for funding cuts by reducing the number of live racing dates to increase purse size. **Commissioner Ulan** requested an update on Racinos. **Director Marquez** stated all parties involved were in the information gathering stage and he would include a report at the next Commission meeting. **Commissioner Kruglick** requested that the information that has been provided to the Legislature be provided to the Commission. **Director Marquez** agreed to add this matter to the Commission agenda for June.

3. **Association of Racing Commissioners International Report- Director Marquez** announced that **Chair Owens** is now also the Chair of Association of Racing Commissioners International (ARCI) and is the 3<sup>rd</sup> woman to hold the position. The Director congratulated Chair Owens on her position and invited her to speak about the ARCI and her appointment as Chair. **Chair Owens** stated that the ARCI developed Model Rules for horse racing that jurisdictions could adapt as their own rules. The ARCI works at the national level and is in the process of developing a track accreditation that would standardize regulation and improve the safety at meets. Among other concerns, track accreditation would consider the standardization of track surface and response to emergencies.

## C. New Business

The following New Business items are for a status report, presentation, discussion, and possible action for the Commission.

1. **Racehorse Adoption Program- Director Marquez** stated that the Department recommended the Commission's approval for the Equine Encore Foundation receive \$1,646.75 from the Department's Racehorse Retirement Fund. **Commissioner Kruglick** stated that the Commission should be provided with more information about the organization and its ability to place retired racehorses. **Director Marquez** stated that he would include further information and would request that the owner of the organization attend the next Commission meeting to answer questions. **Chair Owens** stated that the Equine Encore Foundation had placed 9 retired horses in the past year and that she supported the Department's disbursement of funds to the organization. **Commissioner Ulan** motioned for approval of the Department's Racehorse Retirement Funds disbursement to Equine Encore Foundation. **Commissioner Wootten** seconded the motion. **All in favor.**
2. **Request for Revised Racing Dates for Yavapai County Fair Association-** The Department recommended approval of Yavapai County Fair Association's request that the Commission approve the addition of July 2, 3, 4, 5, 6, and 7 2009 as dark day simulcasting. **Commissioner Ulan** motioned for approval of the request. **Commissioner Wootten** seconded the motion. **All in favor.**
3. **Request for Revised Racing Dates for Coconino County Fair-** The Department recommended approval of Coconino County Fair Racing's request that the Commission approve the removal of July 6 and 7, 2009 from dark day simulcasting; eliminating simulcasting from their meet for FY2010. **Commissioner Ulan** motioned for approval of the request. **Commissioner Wootten** seconded the motion. **All in favor.**
4. **Permittee Operations Reports**
  - **County Fairs** – No report.
  - **Phoenix Greyhound Park** – **Dan Luciano** stated that the track is preparing for weiner dog races later this month. He invited all attendees and informed them of early post times that day.
  - **Rillito Park** –No report.
  - **Tucson Greyhound Park** – **Mr. Tom Taylor** stated that on Memorial Day, TGP would have 13 races and would be giving away free hot dogs.
  - **Turf Paradise** – **Mr. Eugene Joyce** stated that at the completion of this year's meet, Turf Paradise was only down 8% overall. He stated that the national average of decrease was 15%. The track had fewer accidents this year. This year's meet saw a 30% increase in Arizona bred races. There has been concern over the horse population and owners' cuts in relation to the economic downturn. If owners reduce the racehorse population, there may be negative effects to the industry.
  - **Yavapai Downs** – **Mr. Randy Fozzard** stated that there is a presently a nice turn out. The track has made several improvements to its facilities and anticipates a good meet.

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5. **Appeal of Director's Order- Appellant Ry Eikelberry 08A-013-RAC- Ivy Kushner**, appellant's attorney requested a continuance. **Elizabeth Campbell**, Assistant Attorney General, stated that the state agreed to the requested continuance. **Ivy Kushner** requested that a procedure to inform the Commission of a request for continuance before the monthly meeting be instituted. **Commissioner Ulan** motioned for approval of the continuance. **Commissioner Wootten** seconded the motion. **All in favor.**
6. **Appeal of Director's Order- Appellant Justin Evans 08A-278-DOR- Ivy Kushner**, appellant's attorney requested a continuance. **Elizabeth Campbell**, Assistant Attorney General, stated that the State agreed to appellant's requested continuance. **Commissioner Ulan** motioned for approval of the continuance. **Commissioner Wootten** seconded the motion. **All in favor.** **Chair Owens** requested that both cases be resolved at the June Commission meeting.
7. **Appeal of Director's Order- Appellant Troy Smith 09A-001-RAC- Nancy Beck**, Assistant Attorney General, stated that the Commission was provided with materials that did not match the Administrative Record and must review the information before they could make a ruling on this case. **Ivy Kushner**, appellant's attorney, requested the opportunity for meeting attendees to speak on behalf of appellant as some had travelled long distances to attend the hearing. **Nancy Beck** stated that the meeting attendees had testified at prior hearings and it would be improper for the Commission to hear them. **Mary Jo Foster**, Assistant Attorney General and Commission Counsel, stated that the full administrative record must be reviewed and that the witnesses were not to be heard. **Chair Owens** stated that this case was not to be argued before the Commission. She expressed appreciation for the attendance of those who travelled to attend the meeting. **Commissioner Ulan** motioned for the continuance of the case. **Commissioner Wootten** seconded the motion. **All in favor.**

**Mary Jo Foster**, Assistant Attorney General, requested a break at 10:25 a.m. **Chair Owens** called the meeting back to order at 10:37 a.m.. **Commissioner Ulan** motioned for Executive Session. **Commissioner Wootten** seconds the motion. **All in Favor.** Executive Session began at 10:39 a.m. and ended at 10:52 a.m. **Chair Owens** motioned to resume the open meeting at 10:54 a.m. **Commissioner Ulan** seconded the motion. **All in favor.** **Chair Owens** stated that the Commission would not consider any comments made in reference to continued cases in their decisions. Participants in this month's Call to the Public were encouraged to keep their comments to 2 minutes or less.

## D. Commission Reports

### 1. Summary of Current Events Affecting the Arizona Racing Commission

A.R.S. § 38-431.02(K) – Only Commission Members or the Director may report. No discussion or action may be taken on matters reported unless properly noticed for legal action or discussion.

- **Commissioner Paul Ulan** suggested that the June 10, 2009 meeting be rescheduled for 9:00 a.m. **All in Favor.**
- **Legislative and research information about Racinos**
- **Equine Encore Foundation information**

## E. Call to the Public

Those members of the public wishing to address the Commission must sign the signup sheet and be recognized by the Chair. Time permitting; each presentation will be given approximately five minutes. Action taken as a result of public comment will be limited to directing staff to study the matter or re-schedule the matter for further consideration at a later date.

**Craig Lanham-** offered character reference and support for Troy Smith.

**Marcie Amory-** offered character reference and support for Troy Smith.

**Mark Dyer-** offered character reference and support for Troy Smith.

**Mary Jean Bublitz-** offered character reference and support for Troy Smith.

**Lynn Lanham-** offered character reference and support for Troy Smith.

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**Ed Kereluk-** offered character reference and support for Troy Smith.

**Dan McFarlane-** offered character reference and support for Troy Smith.

**Terri Ferguson-** offered character reference and support for Troy Smith.

### Announcements

The next regular commission meeting will be held **Wednesday, June 10, 2009** at **9:00** a.m. in the Building Conference Room, Suite 250, 2<sup>nd</sup> Floor, at 1110 West Washington Street, Phoenix, Arizona 85007.


### Adjournment:

**Chair Owens** adjourned this public meeting at 11:09 a.m.

Dated this 14<sup>th</sup> day of May, 2009

Arizona Racing Commission

By

  
Kelly Gates, Commission Secretary